

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

LARRY GENE WELCH,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD71156

DATE: December 21, 2010

Appeal From:

Circuit Court of Cole County, MO
The Honorable Robert D. Schollmeyer, Judge

Appellate Judges:

Division Two
James Edward Welsh, P.J., Mark D. Pfeiffer, and Karen King Mitchell, JJ.

Attorneys:

Margaret Johnston, Columbia, MO

Counsel for Appellant,

Attorneys:

Shaun Mackelprang, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**LARRY GENE WELCH, Appellant, v.
STATE OF MISSOURI, Respondent**

WD71156

Cole County

Before Division Two Judges: James Edward Welsh, P.J., Mark D. Pfeiffer, and Karen King Mitchell, JJ.

Larry Gene Welch appeals the circuit court's judgment denying his Rule 24.035 motion for post-conviction relief. He claims that the circuit court clearly erred in denying his motion because he proved that he was prejudiced by his plea counsel's erroneously advising him that he would serve only forty to fifty percent of his sentence prior to parole eligibility when, in fact, the statute required him to serve a minimum of eighty-five percent before he would become parole eligible.

AFFIRMED.

Division Two holds:

The circuit court did not clearly err in concluding that Welch failed to establish prejudice from his plea counsel's erroneous advice about his parole eligibility. Although Welch contends there is a reasonable probability that, but for his plea counsel's erroneous advice, he would have chosen to go to trial rather than to plead guilty, the record before us does not support his claim. The facts that Welch asserts were favorable to his defense were, in fact, not favorable, and the facts and circumstances unfavorable to his defense were damning. We defer to the circuit court's credibility determination that, given the evidence against Welch and in light of the possible sentence that he could have faced compared to the sentence he actually received, Welch's assertion that he would have proceeded to trial was incredible.

Opinion by: James Edward Welsh, Judge

December 21, 2010

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